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Letter dated 23 October 2003 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 18 July 2003 (S/2003/738).

The Counter-Terrorism Committee has received the attached third report from the former Yugoslav Republic of Macedonia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

Note verbale dated 22 October 2003 from the Permanent Mission of the former Yugoslav Republic of Macedonia to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of the Republic of Macedonia to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee, has the honour to transmit the second supplementary report of the Republic of Macedonia on the implementation of resolution 1373 (2001) (see enclosure).

Enclosure

SECOND SUPPLEMENTARY REPORT TO THE INITIAL REPORT OF THE REPUBLIC OF MACEDONIA TO THE COUNTER-TERRORISM COMMITTEE (CTC) SUBMITTED PURSUANT TO SC RESOLUTION 1373 (2001)

On questions and comments raised in the letter from the Chairman of the Counter-Terrorism Committee, point 1., " Implementation measures":

1.2 The draft Law Amending the Penal Code of the Republic of Macedonia envisages changes and amendments to more than a hundred existing articles of the Penal Code, as well as adding around twenty new articles. The draft was reviewed by the Government and submitted to the Parliament of the Republic of Macedonia for adoption. With the view of the first reading scheduled to take place soon, it is to be expected that the second reading and final adoption of the law will follow presumably by the end of this year.

The following proposals contained in the draft law reflect the efforts of the Republic of Macedonia to address effectively on national level the implementation of the provisions contained in the SC resolution 1373 (2001) and the global efforts to fight terrorism:

- As mentioned in the initial report, a stricter penal policy will be imposed with regard to the crime of terrorism (article 313 of the Penal Code) by increasing the minimum prescribed sentence from 3 to 4 years in prison.
- A new crime entitled "Terrorist organization" (new article 394-a) is introduced in the draft Penal Code, to read as follows: " (1) A person who creates a group, gang or another criminal organization for the purpose of committing crimes of: murder, assaults, kidnapping, destroying of public facilities, transport systems, infrastructure, information systems and other facilities in public use, high-jacking of planes or other means of transportation, production or trade in nuclear, biological or chemical weapons or other weapons and hazardous material, releasing of radioactive, poisonous and other hazardous substances or causing fire or explosion, destroying of water and energy facilities and basic natural resources, with the aim to create sense of insecurity or fear among the population and endangering the constitutional order in the country or interests of an international organization or of a foreign state, shall be sentenced to minimum eight years in prison. (2) A member of a group, gang or another criminal organization, as well as the one who provides financial means or assists in another way, shall be sentenced from four to ten years in prison. (3) The punishment prescribed in (2) shall also apply to one who publicly call for or support creation of a terrorist organization. (4) The perpetrator of the crime contained in paragraph 1 who by disclosing the organization or in another way prevents committing of the planned crime, shall be sentenced to imprisonment from three months to three years, or may be released from sentencing. (5) The perpetrator from paragraph 2 who discloses the organization before committing, as its member or for its purpose, the crimes listed in paragraph 1 shall be released from sentencing.(6) Objects and means intended for preparation

of crimes, as well as financial assets of the organization shall be confiscated.

- The crime of "Association for enemy activities" will undergo certain changes and will read as follows: "(1) A person who plots or forms a gang, group or another association of persons or organization for committing crimes of high treason (article 305), surrender to occupation (article 306), endangering of territorial integrity (article 307), endangering of independence (article 308), murder of representatives of the highest state organs (article 309), kidnapping of representatives of the highest state organs (article 310), assaulting of representatives of the highest state organs (article 311), terrorism (article 313), diversion (article 314), sabotage (article 315), obstruction of the fight against the enemy (article 321) and serving in enemy army (article 322, paragraph 2), shall be sentenced to minimum four years in prison. (2) A person who becomes member of an association from paragraph 1, shall be sentenced from one to five years in prison. (3) The perpetrators of the crime from paragraph 1 who by disclosing the association or in another way prevents committing of crimes contained in paragraph 1, shall be sentenced from three months to three years, or may be released from sentencing. (4) A member of an association from paragraph 1 who discloses association before committing, as its member or for its purpose, any of the crimes listed in that paragraph, shall be released from sentencing. (5) Objects and means intended for preparation of crimes, as well as financial assets of the organization shall be confiscated.
- The draft Penal Code introduces three (3) new crimes:

"Approval or justification of genocide, crimes against humanity or war crimes (article 407-a)" which reads as follows: "(1) A person who by means of information system publicly negates or severely minimizes, approves or justifies crimes from articles 403 to 407 (genocide, war crimes against civilian population, war crimes against the wounded and the sick, war crimes against prisoners of war, using of prohibited combat means) shall be sentenced from one to five years in prison". (2) Should the negation, minimization, approval or justification be done with the intention to instigate hatred, discrimination and violence against a person or a group of persons on grounds of national, ethnic or racial origin or religious belonging, the perpetrator shall be sen. .ced to minimum four years in prison."

"Misuse of chemical or biological weapons" (article 407-b) which reads as follows:"(1) A person who makes or develops, produces, procures, stockpiles, sales or purchases, or brokers in sales or purchase, posses, carries or transports chemical or biological weapons or any combat weapon, or wages war in a manner prohibited by international law, shall be sentenced from three months to three years in prison."

"Crime against humanity" (article 403-a) which reads as follows: "A person who with an intention to systematically exterminate civilian population, orders committing of murders, serious injuries, physical extermination, putting someone into slavery, deportation or forced displacement of population, confinement or other forms of deprivation of freedom contrary to international law, torture, rape, sexual exploitation or sexual slavery, forced prostitution, forced pregnancy, forced sterilization or any other forms of grave sexual assaults, expelling of a group or community

on grounds of political, racial, national, ethnical, cultural, religious or sexual belonging or other inhuman acts committed with the intention to cause physical or psychical suffering, or a one who with the same intention commits some of the aforementioned crimes, shall be sentenced to minimum ten years in prison or life imprisonment."

- The new draft Penal Code also incriminates "organization of a group and instigation to commit genocide and war crimes"
- The draft Penal Code also envisages changes in the description of the crime of "money laundering and other unlawfully gained property" by changing the title to "money laundering and other proceeds from crime" to read as follows:" (1) A person who puts into circulation, accepts, takes over, exchange or breaks down a larger amount of money he/she gained as a result of crime, or knowing that the money are gained as a result of a criminal activity, or by conversion or transfer in another way conceals that the money originate from a criminal activity or conceals their location, movement or ownership, shall be sentenced from one to ten years in prison." (2) The prescribed penalty in paragraph 1 shall apply to the person who sells, gives as a gift, or puts in another form of circulation a property or objects of greater value gained as a result of criminal activity, or purchases, accepts as a pledge, or in another way gains, conceals or moves property or objects knowing they are gained as a result of a criminal activity or forgery, or by concealment of facts or criminal source of property or objects, or by concealing their location, movement or ownership. (3) Should the crime of paragraph 1 and 2 be done through banking or financial activities or if by splitting of a transaction one avoids the obligation to register according to the law, the perpetrator shall be sentenced to minimum three years in prison. (4) A person who committed the crime of paragraph 1, 2 and 3, and had a duty and could know that the money, property and other assets or objects were gained by a criminal activity, shall be sentenced to a fine or imprisonment of up to three years. (5) A person who commits the crime of paragraph 1, 2, and 3 as a member of a group or another association which deals with money laundering or properties and profit, or with assistance of foreign banks, financial institutions or persons, shall be sentenced to minimum five years in prison. (6) Official person, responsible person in a bank, insurance company, companies involved in organizing gaming, betting and lottery, exchange offices, stock exchange and another financial institution, lawyer - except when acting as defendant counsel , notary or another person who has public authorities, or acts in public interest, who allows or fails to report money laundering, property or profit, which he/she learned about in performing his/her function or duty, shall be sentenced to minimum three years in prison. (7) Should the crime of paragraph 1 be committed by a legal person, it shall be fined. (8) Money, illegally gained assets, objects or another proceeds from criminal activity shall be confiscated, and should confiscation not be possible, the perpetrator shall be deprived of other property of the same value.

Apart from the changes envisaged with the draft Penal Code, the Ministry of Justice is currently reviewing changes and amendments to the Law on Criminal Procedure whereby, *inter alia*, special investigative measures in criminal procedure

will be introduced, subject to prior changes in article 17 of the Constitution of the Republic of Macedonia (in terms of allowing disclosure, where deemed necessary for prevention or revealing of a crime or where security and defense interests of the country are threatened, of the content of private correspondence and taking some other special measures for the purpose of conducting investigation, on the basis of a court decision/written order from an investigative judge). The first reading of article 17 changes were passed in the Parliament and the second reading will follow soon, with a view to their final adoption by the and of the year 2003.

As to the process of preparation of the draft Law Against Terrorism, according to the programme of work of the Government cabinet, the draft has been scheduled for review in December 2003. The working group within the Ministry of Interior for preparation of the draft law will incorporate modern concepts and solutions in the fight against terrorism as adopted by many European countries, by using comparative analysis and experiences.

1.4., 1.5. and 1.6. Pursuant to Article 26, paragraph 1 of the Law on Prevention of Money Laundering "All natural and legal person, as well as lawyers, notaries public, authorized accountants and auditors have a duty to submit reports to the Directorate for prevention of money laundering on transactions suspicious to be meant to or made for the purpose of money laundering, as well as on transactions suspicious of originating from a criminal activity." Accordingly, for the time being, the law imposes a duty to report only on money laundering.

Being aware of its obligations in the global fight to suppress financing of terrorism and to implement various international instruments and recommendations by FATF, the Government of the Republic of Macedonia recently prepared a draft Law Amending the Law on Prevention of Money Laundering yet to be passed by the National Assembly. The draft law contains a new article which envisages that all subjects which under the Law have a duty to undertake measures and activities to prevent money laundering have a duty to withhold transaction and without any delay, and no longer that 24 hours from withholding, to report to the Financial Police-Unit on prevention of money laundering on transaction suspicious of including clients or any other participants for which domestic or international warrants have been issued for the following crimes: genocide, war crimes and other international crimes, terrorism, murder, burglary, bribery and other serious crimes for which a sentence of minimum four years in prison is prescribed by the law. Also, according to the draft Law, these subjects have a duty to withhold all the transactions which are suspicious of being related to a terrorist activity of a client or a participant in transaction, or should the money or property which are object of transaction be meant to a terrorist activity. The subject has to report to the Financial Police within 24 hours on the reasons for withholding, which can last until the subject is being informed by the Financial Police-Unit on prevention of money laundering that it is allowed to continue with processing of the transaction. The warrants with the names of the perpetrators are to be regularly provided to the Financial Police-Unit on prevention of money laundering and updated by the Ministry of Interior. The withholding of the suspicious transaction may last as long as the client or another participant in transaction is removed from the lists of warrants, or until the person is given a court verdict related to the withheld transaction.

1.7. See answers under 1.2. Some of the aforementioned changes and amendments as contained in the draft Penal Code effectively cover the requirements contained in sub-paragraph 2 (a) of the resolution 1373 (2001).

1.8. The requested explanations refer to article 396 of the Penal Code of the Republic of Macedonia, which has been amended with the changes in the Penal Code adopted by the National Assembly of the Republic of Macedonia on 24th June 2003, which article (entitled "illicit production, possession and trade in arms or dispersible material" now reads as follows:" (1) A person who without authorization manufactures, possesses, sells, purchases or trades in arms, ammunition or explosive material shall be sentenced from to one to ten years in prison. (2) Should the object of crime from paragraph 1 be a greater quantity of arms, ammunition or explosive material which are forbidden for the citizens, the perpetrator shall be sentenced to minimum five years in prison. (3) The objects from paragraphs 1 and 2 as well as means of their manufacture, transportation and dissemination shall be confiscated.

The phrase "arms, ammunition or explosive material forbidden for the citizens" stands for arms and dispersible material which cannot be traded in under the law. One should, in that connection, make a distinction between illicit possession of arms, ammunition and explosive material which are under all circumstances forbidden to trade in, and acquisition and possession of arms and other material for which a person has to obtain special license from the competent authorities within Ministry of Interior, otherwise that person commits an offence under the Law on Acquisition, Possession and Carrying of Arms, which law also describes the types of arms, ammunition and explosive material that come under the licensing regime. Recently some changes and amendments to this law have been reviewed by the Government, with a view to putting them in a parliamentary procedure soon.

1.9. Article 6 of the new Law on Asylum and Temporary Protection (published in "the Official Gazette of the Republic of Macedonia" No. 49/2003) contains relevant provisions for the implementation of the resolution 1373, which read as follows: " A foreigner shall have no right to asylum in the Republic of Macedonia provided that:

- there is a founded suspicion that he/she has committed a crime against peace, humanity or a war crime, defined in international instruments prohibiting such crimes;
- he/she has committed a grave criminal offence (non-political) outside of the territory of the Republic of Macedonia prior to his/her refuge in the country; or
- he/she is found guilty for activities which run against the aims and the principles of the United Nations.

1.10. On March 17 2003 the Government of the Republic of Macedonia decided to set up an Interminsterial Working Group to design and oversee the implementation of the project for Integrated Border Management. The elaboration of the project is in its advanced stage, i.e. a draft version of the Strategy for the Integrated Border Management has been prepared. The principal goal of this project is to create a capable Border Police Unit that would take over the duty of securing the state border from the Ministry of Defense i.e. from the Army of the Republic of Macedonia, and to provide technical, human and other resources for effective and sustainable integrated border management which will meet the standards for border controlling of the countries of the European Union signatories of the Schengen Agreement. Also, the

implementation of the CARDS projects in this field will continue in the forthcoming period.

In addition, enhanced operative measures on the border crossings will be taken in order to prevent terrorist threats and movement of the terrorists and terrorist groups in the border areas, by using up-to-date technical means to monitor border crossings and to prevent illegal border crossings and usage of forged travel and identification documents. Also in that regard, cooperation and intelligence sharing among relevant national and international subjects will be further strengthened, in accordance with the national and international law.

1.11. The procedures for ratification of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention for the Suppression of Terrorist Bombing by the Republic of Macedonia are under way, with the view to their finalization by the end of the year 2003. With regard to the two remaining UN instruments against terrorism the Republic of Macedonia has not signed yet (Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and Protocol for the Suppression of Unlawful Acts against Safety of Fixed Platforms Located on the Continental Shelf), the Ministry of Foreign Affairs has initiated the governmental procedure for their signing, which is under way.

As to the other international instruments, a progress achieved after the last reporting to the Committee, the Republic of Macedonia in May of this year signed the Protocol amending the European Convention for the Suppression of Terrorism and ratified the Second Additional Protocol to the European Convention for International Legal Assistance in Criminal Matters of the Council of Europe.

On point 2 "Assistance and Guidance", the identification of possible areas for the CTC assistance and advise in the projects in this sphere in the Republic of Macedonia is under consideration.